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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,887	01/09/2006	David Bedford	102792-459 (11166P1)	7955
27380 7590 05/23/2008 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER CERNOCH, STEVEN MICHAEL	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 05/23/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/541,887

**Applicant(s)**

BEDFORD ET AL.

**Examiner**

STEVEN CERNOCH

**Art Unit**

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 April 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
4a) Of the above claim(s) 4 and 9 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3, 5-8 and 10-15 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 7/7/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

The corrections to the specification were received on 4/16/2005. The amendments are accepted.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary et al. (International Pub. No. WO 00/24434) in view of Jellinek et al. (German Pat. No. DE 3239511 A1) upon further view of Rattan et al. (US Pat. No. 4,161,284).

Regarding claim 1, O'Leary et al. discloses a device for perfuming, deodorizing or sanitizing air or enclosed spaces (Abstract, lines 1-4 and 20-24) comprising an anhydrous gel element formed by cross-linking a functionalized liquid polymer with a

cross linking agent in the presence of a non-aqueous perfume, deodorizing or sanitizing base (column 5, lines 32-35 and column 6, lines1-5) but does not teach the separate timing means or actuating means, however Jellinek et al. does disclose a separate timing means for proving an end-of-life indication (Abstract, lines 3-11) and Jellinek et al. teaches wherein the timing means comprises an additional element, which visibly shrinks over the intended lifetime of the device (Abstract, lines 3-11) and Rattan et al. teaches actuating means (Abstract, lines 10-12)..

. Therefore it would be obvious to one having skill in the art to have the motivation to combine the device of O'Leary et al. with the end-of-life indicator of Jellinek et al. to show the consumer when it's time to refill the device and the actuating means of Rattan et al. in order to keep the liquids safe until needed.

With regard to claim 2, O'Leary et al. teaches wherein the functionalized liquid polymer is selected from maleinised polybutadiene, maleinised polyisoprene or a copolymer of ethylene and maleic anhydride and the cross linking agent contains at least two complementary functional groups (column 5, lines 34-35 and column 6, lines1-3).

In regards to claim 3, O'Leary et al. discloses wherein the non-aqueous perfume, deodorizing or sanitizing base constitutes from 60 to 95wt% of the gel element (column 16, lines 2-6).

With regard to claim 5, Jellinek et al. discloses wherein the additional element comprises a gel, which shrinks at a greater rate than said anhydrous gel element (Abstract, lines 3-11).

With regard to claim 10, Rattan et al. discloses wherein the actuating means comprises an impermeable foil, which covers the substance and the timing means (column 2, lines 49-52).

In regards to claim 11, O'Leary et al. teaches wherein the non-aqueous perfume, deodorizing or sanitizing base constitutes from 60 to 95wt% of the gel element (column 16, lines 2-6).

Regarding claim 12, Jellinek et al. discloses wherein the separate timing means for proving an end-of-life indication is a visible signal means (Abstract, lines 3-5). Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary et al. (International Pub. No. WO 00/24434) in view of Jellinek et al. (German Pat. No. DE 3239511 A1) in further view of Ishikawa et al. (US Pub. No. 2002/0173762 A1).

Regarding claim 6, O'Leary et al. teaches the device while Jellinek et al. teaches the additional timing means, however Ishikawa et al. teaches wherein the additional element comprises particles which shrink, compact or dissolve (Paragraph 0027, line 1). Therefore it would be obvious to one having skill in the art to have the motivation to combine the device of O'Leary et al. and the timing means of Jellinek et al. with particles of Ishikawa et al. because particles would be more compact, hence take up less space.

With regard to claim 7, Ishikawa et al. discloses wherein the particles comprise a maleic anhydride-isobutylene copolymer (Paragraph 0027, lines 7-8).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary et al. (International Pub. No. WO 00/24434) in view of Jellinek et al. (German Pat. No. DE 3239511 A1) in further view of Dundale et al. (US Pub. No. 2002/0110498 A1).

In regards to claim 8, O'Leary et al. teaches the device and Jellinek et al. teaches the timing means, however Dundale et al. discloses wherein the timing means provides an end-of-life indication after from 28 to 40 days use of the device (Paragraph 0045). Therefore it would be obvious to one having skill in the art to have the motivation to combine the device of O'Leary et al. with the timing means of Jellinek et al. and the indication range of Dundale et al. to provide a time frame for the product.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary et al. (International Pub. No. WO 00/24434) in view of Jellinek et al. (German Pat. No. DE 3239511 A1) in further view of Carter et al. (US Pat. No. 4,702,418).

In regards to claim 13, O'Leary et al. teaches the device and Jellinek et al. teaches the timing means, however Carter et al. teaches wherein the separate timing means for proving an end-of-life indication is an audio signal means (Column 6, lines 53-57). Therefore it would be obvious to one having skill in the art to have the motivation to combine the device of O'Leary et al. and the timing means of Jellinek et al. with the audio signal means of Carter et al. for easier notification purposes.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary et al. (International Pub. No. WO 00/24434) in view of Jellinek et al. (German Pat. No. DE 3239511 A1) in further view of Marquez-Lucero et al. (US Pat. No. 5,574,377).

Regarding claim 14, O'Leary et al. discloses the anhydrous gel element and Jellinek et al. discloses the separate timing means, however Marquez-Lucero et al. discloses the conducting particles (column 4, line 25). Therefore it be obvious to one having skill in the art to have the motivation to combine the gel element of O'Leary et al. with the conducting particles of Marquez-Lucero et al. to create an easier mixture with other conductors.

With regard to claim 15, Marquez-Lucero et al. teaches wherein the conducting particles are selected from carbon black, graphite and metals (column 4, lines 25-32).

#### ***Response to Arguments***

Applicant's arguments filed on 4/16/2008 have been fully considered but they are not persuasive.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In re McLaughlin, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **STEVEN CERNOCH** whose telephone number is (571)270-3540. The examiner can normally be reached on IFP.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. C./  
Examiner, Art Unit 3752

/Len Tran/  
Supervisory Patent Examiner, Art Unit 3752